IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.26188 of 1998

Between:

Chemakuri Jogi Reddy, S/o. Late Koti Reddy.
82 years, R/o 46-13-9, Dondaparthy, Visakhapatnam.

..... PETITIONER

AND

1 The Chief of Army Staff,
Army Head Quarters, New Delhi.
2 The Director of Indian Signal Corps,
Army Head Quarters, New Delhi.
3 The Officer-in-charge,
Records of Signal Corps., P.B.No. 5,
Jabalpur, M.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction, directing the respondents to pay the reserve pension to the petitioner as per his terms of enlistment i.e., 7/8 years of service as he fulfilled all the requirements from the date of his retirement with all consequential benefits by declaring the inaction of the respondents as illegal, arbitrary and contrary to terms of service conditions and pass such other order or orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: Mr. S.RAMA MOORTHY REDDY

Counsel for the Respondents: Mr. DEEPAK BHATTACHARJEE

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the action of the respondents in not granting pension to the petitioner as arbitrary and illegal and consequently to direct the respondents to pay the reserve pension to the petitioner as per the Terms of Enlistment i.e. 7/8 years of service rendered in the Indian Army, with all consequential benefits.

It is the case of the petitioner that he studied upto SSLC and joined the Indian Army on 20-7-1934 as Sepoy. He was posted as Wireless Operator after completion of his training. As per the Recruitment Rules and Terms of Enlistment, he had to work for 7 years in colour service i.e. active service and 8 years on reserve service. As per these terms and conditions of service he had to work for 7 years with usual leave and other allowances and he is entitled for full salary for all the 7 years period. After completion of 7 years, the respondents had to discharge him with a condition that he should work for 2 months in a year for a period of 8 years, that means, he had to work for 16 months during these 8 years period and he would be paid full salary for those 16 months period. After completion of 15 years service from the date of joining, he is entitled for reserve pension as per the recruitment rules.

It is asserted by the petitioner that after joining duty, he underwent training at Jabalpur for a period of one year and was posted at Rawalpindi. At that time, war took place between British Government and North West Frontier. Civil Forces participated in the war. In view of the efficient service rendered by him, he was

awarded Indian General Service Medal in the year 1936-37. Further, he was promoted as Lans Naik, Naik, Hawaldar and finally as Junior Commissioned Officer then. In V.C.O. service, he worked for more than four years. In the meanwhile, II World War took place between 1939 and 1944. He had participated in the same. It is his specific case that though he had completed 8 years of service, he was not sent on reserve service immediately and finally he was discharged on 5-11-1944 stating that his services were no longer required. By the date of discharge, he had worked for more than 10 years and 3½ months, as against the original terms of enlistment i.e. 7/8 years. The respondents should have discharged his services immediately after completion of 7 years and he should have been asked to work at the rate of 2 months per year for 8 years thereafter; or else, the respondents should have continued him in service for full 15 years period and paid the full pension. But, the respondents utilized his services only for a period of 10 years and 3½ months i.e. more than three years than the required period for reserve pension. Though he had worked for nearly two years more even after deducting 16 months of service, the respondents are not paying any kind of pension to him. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is *inter alia* asserted that the petitioner was enrolled in the Army (Indian Signals Corps) on 20-7-1934 and was discharged on 5-11-1944 under I.A.A. Rule 13(B) I (iii) being 'service' no longer required due to his unsatisfactory service after commission to the rank of Jamadar with effect from 6-12-1941. Letters to that effect were also issued to the petitioner. In order to earn service pension, an Army personnel is required to put in a minimum of 15 years qualifying service under the provisions of Para 132 of Pension Regulations for the Army 1961 (Part I). The petitioner is not entitled for the grant of service/reserve pension, as he did not put in the minimum qualifying service of 15 years.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the material made available on record.

Learned Standing Counsel for the respondents placed before this Court a copy of the Pension Regulations for the Army in India,1940 as amended in April,1942. As seen from the above narration of facts, the petitioner worked for more than 10 years and was discharged from the services of Indian Army. It seems he has worked during First and Second world wars. According to him, no pension was paid, though

he is entitled for the same. On the other hand, the respondents assert that the petitioner is not entitled for any pension, since in those days he was governed by the Pension Regulations for the Army in India,1940, which contemplate completion of 15 years of continuous service in the Army for the purpose of grant of pension. Therefore, the petitioner is neither here nor there. But, it is not in dispute that the petitioner worked for more than 10 years in the Indian Army and retired from service. It is also not in dispute that he was paid some gratuity as per his eligibility. But, according to the petitioner, the only thing that was denied to him was grant of pension.

Be that as it may, it is now more than 50 years that the petitioner has not raised his little finger. He is aged about 89 years now and he asserts that he is entitled for pension. But, he is not able to place before this Court any relevant Rules under which he is entitled for pension, apart from gratuity already paid. In a case like this whether there is any delay in approaching this Court or not is not relevant, since the petitioner has worked in the Indian Army for more than 10 years particularly during the crucial period of First and Second world wars. But, no Rules or Regulations under which he is entitled for pension, are placed before this Court and on the other hand, the respondents assert that the petitioner is not entitled for pension either under 1940 Rules or under 1961 Rules.

Under those circumstances, I am of the considered opinion that the competent authority shall examine the case of the petitioner with reference to the relevant Rules/Regulations and instructions issued from time to time as to the payment of pension. According to the learned counsel for the respondents, the 3rd respondent is the competent authority to consider such cases. Therefore, the 3rd respondent is directed to consider the case of the petitioner taking all the above things into consideration and pass appropriate orders, within a period of one month from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No order as to costs.

27-6-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chief of Army Staff,
Army Head Quarters, New Delhi.
2 The Director of Indian Signal Corps,
Army Head Quarters, New Delhi.
3 The Officer-in-charge,
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